

#14

PTO/SB/64 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)
MST-1980.2

First named inventor: Robert H. Adolfsen

Application No.: 09/541,663

Art Unit: 1743

Filed: April 3, 2000

Examiner: Brian R. Gordon

Title: Method and Apparatus for Controlling a Stream of Liquid Test Packages in a Capsule Chemistry Analysis

RECEIVED

JAN 28 2004

OFFICE OF PETITIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1,330 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of Request for Continued Examination (identify type of reply):

☐ has been filed previously on _____.
☒ is enclosed herewith.

B. The issue fee of \$ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

01/26/2004 SLUANG1 00000037 133370 09541663

01 FC:1453 1330.00 DA

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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3. Terminal disclaimer with disclaimer fee


- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

January 20, 2004

Date


Signature

Telephone

Number: 914-524-2094

John M. Paolino
Typed or printed name

511 Benedict Avenue
Address

Enclosures: ☒ Fee Payment

Tarrytown, N.Y. 10591
Address

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Fee Transmittal and Transmittal Form

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

Express Mail No. ER644767486 US

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

January 21, 2004
Date


Signature

Pamela Bailey
Type or printed name of person signing certificate

MSA-1980.3

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

JAN 28 2004

OFFICE OF PETITIONS

In re application of: Adolfsen et. al.

Serial No.: 09/541,663

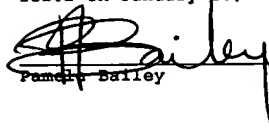
Group Art Unit: 1743

Filed: April 3, 2000

Examiner: B. Gordon

For: Method and Apparatus for
Controlling a Stream of
Liquid Test Packages in a
Capsule Chemistry System

I, Pamela Bailey, certify that this correspondence
is being deposited with Express Mail in an envelope
addressed to the Mail Stop Petition, Commissioner
for Patents, P. O. Box 1450, Alexandria, Virginia
22202 on January 20, 2004


Pamela Bailey

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Renewed Petition Under 37 C.F.R. § 1.137(b)

The above-referenced application became abandoned on June 15, 2003. Applicant submitted a petition to revive the above-referenced application dated November 3, 2003 ("the Petition" attached hereto as Exhibit A). The petition sought to revive the application pursuant to 37 C.F.R. 1.137(b) as being abandoned due to unintentional delay.

The petition included a Submission Pursuant to 37 C.F.R. § 1.114 (Exhibit B) in response to the Office Action of March 14, 2003. Applicant intended the submission to accompany a Request for Continued Prosecution pursuant to 37 C.F.R. § 1.114 but inadvertently omitted the proper request.

On December 9, 2003, the Office of Petitions dismissed the Petition for failing to include the proper reply. In particular, the amendment submitted with the Petition was not deemed to place the claims in condition for allowance.

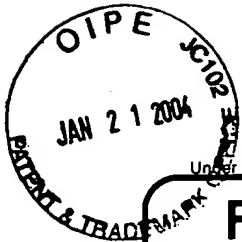
Applicant hereby renews its request to revive the above-referenced application via the enclosed form. A Request for Continued Examination accompanies the renewed Petition. Applicant requests the entry of the submission accompanying the original Petition and the grant of the renewed Petition.

Respectfully submitted,



John M. Paolino
Registration No. 40,340

Date: January 20, 2004
Bayer HealthCare LLC
511 Benedict Avenue
Tarrytown, NY 10591-5097
(914) 524-2552



RECEIVED

JAN 28 2004

OFFICE OF PETITIONS

Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL
for FY 2003

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$) 2,100.00

Complete if Known

Application Number	09/541,663
Filing Date	April 3, 2000
First Named Inventor	Robert H. Adolfsen
Examiner Name	Brian R. Gordon
Group Art Unit	1743
Attorney Docket No.	MST-1980.2

METHOD OF PAYMENT

- 1.
- ☒
- The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number	13-3370
Deposit Account Name	Bayer HealthCare

- ☒
- Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

☐ Applicant claims small entity status. See 37 CFR 1.27

- 2.
- ☐
- Payment Enclosed:

☐ Check ☐ Credit card ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Code	Large Entity Fee (\$)	Small Entity Code	Small Entity Fee (\$)	Fee Description	Fee Paid
101	710	201	355	Utility filing fee	
106	320	206	160	Design filing fee	
107	490	207	245	Plant filing fee	
108	710	208	355	Reissue filing fee	
114	150	214	75	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Code	Large Entity Fee (\$)	Small Entity Code	Small Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claim, if not paid
109	80	209	40	** Reissue independent claims over original patent
110	18	210	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Code	Large Entity Fee (\$)	Small Entity Code	Small Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	390	216	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	1,330.00
141	1,240	241	620	Petition to revive - unintentional	
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	600	244	300	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	710	246	355	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	710	249	355	For each additional invention to be examined (37 CFR § 1.129(b))	
179	710	279	355	Request for Continued Examination (RCE)	770.00
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 2,100.00

SUBMITTED BY

Name (Print/Type)	John M. Paolino	Registration No. (Attorney/Agent)	40,340	Telephone	914-524-2552
Signature		Date	1/21/2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



01-22-04

DAC #

Please type a plus sign (+) inside this box → ☐

PTO/SB/21 (08-00)

Approved for use through 10/31/2002, OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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JAN 28 2004
OFFICE OF PETITIONS

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/541,663
Filing Date	April 3, 2000
First Named Inventor	Adolfsen et al.
Group Art Unit	1743
Examiner Name	B. Gordon
Attorney Docket Number	MST-1980.2

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):		
<table><tr><td>Remarks</td><td>Request for Continued Examination Statement pursuant to 37 CFR 1.137(b) Exhibit A and B</td></tr></table>			Remarks	Request for Continued Examination Statement pursuant to 37 CFR 1.137(b) Exhibit A and B
Remarks	Request for Continued Examination Statement pursuant to 37 CFR 1.137(b) Exhibit A and B			

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	John M. Paolino
Signature	
Date	January 21, 2004

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 1/21/04

Typed or printed name	John M. Paolino - Reg. No. 40,340
Signature	
Date	1/21/2004

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Adolfson et al.

: Examiner: B. Gordon

Serial No.: 09/541,663

: Group Art Unit: 1743

Filed: April 3, 2000

*Method and Apparatus for Controlling a
Stream of Liquid Test Packages in a Capsule
Chemistry Analysis System*

PETITION TO REVIVE FOR UNINTENTIONAL DELAY
PURSUANT TO 37 C.F.R. § 1.137(b)

Commissioner for Patents
2011 South Clark Place
Crystal Plaza Two, Lobby, Room 1B03
Alexandria, Virginia 22202

Sir:

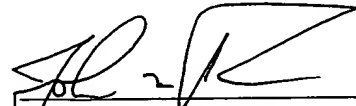
Pursuant to the provisions of 37 CFR 1.137(b), petition is hereby made for revival of the subject application which has been unintentionally delayed.

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

The Commissioner is hereby authorized to charge any fees due in connection with the above-identified application to Deposit Account No. 13-3370.

The grant of this petition is respectfully requested.

Respectfully submitted,



JOHN M. PAOLINO
Registration No. 40,340

Bayer Corporation
511 Benedict Avenue
Tarrytown, NY 10591-5097
(914) 524-2093

Dated: October 31, 2003



EST-1980.3

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Adolfsen et. al.

Serial No.: 09/541,663

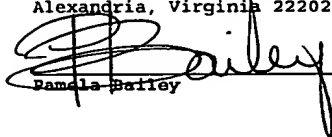
Group Art Unit: 1743

Filed: April 3, 2000

Examiner: B. Gordon

For: Method and Apparatus for
Controlling a Stream of
Liquid Test Packages in a
Capsule Chemistry System

I, Pamela Bailey, certify that this correspondence is being deposited with Federal Express as Overnight Mail in an envelope addressed to the Commissioner for Patents, 2011 South Clark Place, Crystal Plaza Two, Lobby, Room 1B03, Alexandria, Virginia 22202 on October 31, 2003


Pamela Bailey

Commissioner for Patents
2011 South Clark Place
Crystal Plaza Two, Lobby, Room 1B03
Alexandria, Virginia 22202

Submission Pursuant to 37 C.F.R. §1.114

Sir:

The following Amendment is submitted in response to the Office Action of March 14, 2003 (Paper No. 8) and accompanies Applicant's Petition to Revive for Unintentional Delay Pursuant to 37 C.F.R. § 1.1379(b).

Please amend the above identified application as follows:

MST-1980.3

PATENT

IN THE SPECIFICATION

No amendments.

IN THE CLAIMS

This listing of claims will replace all prior versions and listings of claims in the application.

Please amend claim 52 as shown below.

Please cancel claims 55-57.

Please add new claim 58.

Please add new claim 59.

STATUS OF CLAIMS

Claims 1-51 (Previously Withdrawn from Consideration)

Claim 52 (Third Amendment) 52. A method for controlling a stream of liquid and air segments, comprising:

selectively aspirating liquid segments and air segments into a first fluid conduit in a plurality of cycles, each cycle beginning with the aspiration of a first air segment and ending with the aspiration of a final air segment, said first and final air segments [of] each having a volume;

actuating a valve so as to couple said first conduit to a second conduit;

transferring the liquid segments and the air segments of each of said plurality of cycles from said first fluid conduit to [a]

said second fluid conduit;

closing said valve in order to adjust[ing] the volume of the final air segment of each cycle after the final air segment has moved into said second fluid conduit;

actuating said valve so as to connect said second fluid conduit to a third fluid conduit;

transferring the liquid segments and the air segments of each of said plurality of cycles from said second fluid conduit to a third fluid conduit; [and]

detecting an interface between a final liquid segment and the final air segment;

stopping the flow of said liquid segments and air segments and closing said valve in response to the detection of said interface so as to adjust[ing] the volume of the first air segment of each cycle [after the first air segment has moved into said third fluid conduit wherein] whereby the volume of the final air segment is adjusted to equal an optimal volume. [; and

wherein said volume of the first air segment is adjusted according to a feedback loop.]

Claim 53-54 (Previously Cancelled)

Claim 55-57. (Cancelled)

Claim 58 (New) The method of claim 52 further comprising the steps of flowing the liquid segments and air segments of each of said plurality of cycles in a forward and reverse direction in said third fluid conduit past a detector placed at a pre-determined point along said third fluid conduit.

Claim 59 (New) The method of claim 58 wherein said interface is detected when said plurality of cycles are flowing in a reverse direction.

Claim 60 (New) The method of claim 52 wherein upon detection of the interface flow is stopped and the valve is closed after a pre-determined time delay, said delay being normalized around a predetermined nominal center point delay according to a feedback loop.

REMARKS

Claims 55-57 have been cancelled without prejudice. Claim 52 and new claims 58-59 are pending in this application. In the Office Action of March 14, 2003 Claims 52-57 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In addition, claims 52-57 have been rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,399,497 -Kumar.

Reconsideration and withdrawal of the rejections and objections are requested for the reasons stated below.

35 U.S.C. § 112 Rejections

Claim 52 has been amended to more particularly point out the subject matter the applicant considers to be the invention. In particular, it is now clear that the valve is actuated to connect the first conduit to the second conduit. As clearly stated in the specification, the first air segment then flows into the second conduit first and the last air segment flows into the conduit last. Thus, the order of flow out of the second conduit is first in last out. The valve is then closed. This has the effect of truncating the last air segment and adjusting its volume. (See Specification Pg. 5, Lines 8-16)

The valve is actuated again to connect the second conduit with the third conduit. The segments are then flowed into the third conduit. (See Specification Pg. 5, Lines 17-23.) An interface between the final air segment and a final liquid segment is detected. The detection of this interface is fed back to the valve control whereby the valve is closed so as to truncate the volume of the first air segment. (See Specification Pg. 20, Lines 9-15.)

New claims 58-59 add the steps of having the plurality of fluid and air segments flowing in a forward and reverse direction in the third fluid conduit. The interface is detected when the flow is reversed, i.e. back towards the valve. At this point, the flow is stopped and the valve is closed after a pre-determined time delay. This time delay is normalized around a predetermined nominal center point delay according to a feedback loop. (See Specification Pg. 20, Lines 17-23 to Pg. 22, Lines 1-19)

No new matter has been added to the claims. Support for the amendments can be found in the Specification at the pages noted above. Claim 52 clearly and distinctly claims the subject matter that the applicant considers the invention and does not omit any essential steps. Accordingly, it is respectfully requested that the amendments be entered and the rejection of claim 52 under 35 U.S.C. §112, second paragraph be withdrawn.

35 U.S.C. § 103 Rejections

Claim 52 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Kumar. The apparatus of Kumar features a plurality of fluid conduits that are lined with an isolation liquid. Test packages, which comprise a plurality of liquid and air segments, are aspirated into a first fluid conduit. Each test package occupies a given length of the fluid conduit. As new test packages are moved into the first conduit, the previous test packages are gradually moved from the first conduit into a second conduit.

When one of the previous test packages reach a predetermined point in the second conduit, a valve is actuated and the test package is transferred to a third fluid conduit. During these operations, it is crucial that the test package be precisely positioned within the conduits. Thus, ideally, each test package should be the same length so that the control of the stream can be precisely timed.

Unfortunately, the length of the liquid segments of the test packages vary. This is caused by variations in the surface tensions of the liquids which make up each liquid segment. Thus, each liquid segment interacts differently with the isolation liquid. (See Page 9, Lines 1-10 of the Specification). Thus,

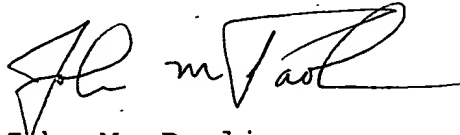
liquid segments having different physical properties will have different lengths. This adversely affects the length of the overall test packages, so that it may be out of position relative to, for example, the luminometer.

In order to solve this problem, the present invention employs a method that adjusts the volume of the air segments, thus adjusting the overall length of the test packages. In addition, a feed back loop is employed in conjunction with the means for adjusting the volume so as to avoid adversely affecting the next successive test package. In this manner it is assured that the liquid segments are accurately positioned within the conduits. This method is not disclosed or suggested by Kumar. Indeed, Kumar exhibits the very shortcomings that the present invention seeks to overcome. Thus, it would not be obvious to one of ordinary skill in the art modify Kumar to obtain the present invention.

CONCLUSION

Every effort has been made to particularly and distinctly define the subject matter of the invention. The claims are definite, and are patentable over the prior art of record. For all the foregoing reasons, the differences between the invention and the prior art of record are such that the subject matter claimed as a whole is patentable over the prior art cited by the Examiner. Reconsideration, and allowance of the pending claims, are respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'John M. Paolino', with a stylized flourish at the end.

John M. Paolino
Registration No. 40,340

Date: October 31, 2003
Bayer HealthCare LLC
511 Benedict Avenue
Tarrytown, NY 10591-5097
(914) 524-2552